
(2011) 04 AP CK 0058

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1110 of 2007

Chuppala Jaggarao, @ Jaggireddy

APPELLANT

Vs

The State of Andhra Pradesh and State by Inspector of Police

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 235(1), 235(2), 374(2)

Evidence Act, 1872 — Section 24, 27

Penal Code, 1860 (IPC) — Section 201, 300, 302, 364

Citation : (2011) 04 AP CK 0058

Hon'ble Judges : V. Suri Appa Rao, J;V. Eswaraiah, J

Bench : Division Bench

Advocate : C. Vasundhara Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. Suri Appa Rao, J.—The Appellant herein is the sole accused, has filed the present appeal against u/s 374(2) of Code of Criminal Procedure against the judgment in S.C No. 91 of 2005 dated 9.1.2007 by the learned VIII Additional Sessions Judge, East Godavari district at Rajahmundry, convicting and sentencing him as under:

... The Accused is found guilty for the offence u/s 302 IPC in Crime No. 37 of 2004 and convicted u/s 235(2) of Code of Criminal Procedure and sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/- in default, simple imprisonment for one month. : He is also found guilty for the offence u/s 302 IPC in Crime No. 40 of 2004 and is convicted u/s 235(2) of Code of Criminal Procedure and sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/- in default, simple imprisonment for one month.

Accused also found guilty for the offence u/s 364 IPC and is convicted u/s 235(2) Code of Criminal Procedure and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 500/- in default simple imprisonment for one

month.

Accused is not found guilty for the offence u/s 201 IPC and is acquitted u/s 235(1) Code of Criminal Procedure.

The aforesaid sentence should run concurrently....

2. Briefly stated the case of the prosecution is that Mr. Chuppala Jaggaraa/accused and Smt Chuppala Pentamma @ Niharika/deceased No. 1 loved each other and lead conjugal life at the house of accused at Pedapeddada and suspecting the character of deceased No. 1 the accused used to beat her, as such the mother of accused sent her to her parents house at Anampalli. After lapse of one year, again accused joined the company of deceased No. 1 and started living with her in a separate house at Anampalli. The accused was of the view that the parents of deceased No. 1 are supporting her as such she is not caring him and neglecting him and decided to cause harm to the family members of his wife. In furtherance of the same, on 26.4.2004, accused went to Deepthi Camp School at Pendarimamidi village, took Master. Velala Prakash rao/deceased No. 2 who is brother of deceased No. 1 along with him and kept him in his cashewnut tope at Pedageddada village. Thereafter he wrote two letters to his mother-in-law Smt. Valala Yesamma and his wife/deceased No. 1 asking them to come to Gokavaram bus stand with his clothes and cash of Rs. 500/- and sent the said letters to Sambhudu Suresh, who in turn handed over the same to deceased No. 1. That on 30.4.2004, accused beat Prakash Rao/deceased No. 2 on his head with a stone at Safari hills and caused instantaneous death and abandoned the dead body in the side by dry canal. Thereafter on 1.5.2004, the accused went to Anampalli, asked his wife/deceased No. 1 to accompany him to Pedageddada to bring her brother Prakashrao and at about 12 noon they proceeded towards Pedageddada, which was witnessed by P.Ws 2 to 6. At about 2.30 p.m. they went to the fields of the accused where the accused stabbed his wife with knife indiscriminately and caused instantaneous death and in the scuffle the accused also received injuries on his hands.

3. On 2.5.2004, Mr. Valala Bullaiah/P.W.1 traced the dead body of Pentamma/deceased No. 1 and reported the same to Rampachodavaram police station and based on the said complaint a crime in Crime No. 37 of 2004 was registered u/s 302 IPC. The Circle Inspector of police/P.W.26 took up the investigation, examined the scene of offence and seized the material objects in presence of P.W. 19 and others and conducted inquest over the dead body in presence of panchas and sent the dead body for post mortem examination. On 8.5.2004, the Circle Inspector of Police/P.W.26 received an inland letter written by the accused through post. On 9.5.2004 morning the dead body of Valala Prakashrao/deceased No. 2 was traced by P.W.1 in highly decomposed state and he immediately reported the matter to the police and the Sub Inspector of Police, Rampachodavaram registered a crime in Crime NO. 40 of 2004 u/s 174 of Code of Criminal Procedure. Then the Circle Inspector of Police/P.W.26 visited the scene of offence in presence of mediators/P.W.20 and others and held inquest in

presence of panchas and sent the dead body to Community Health Centre, Rampachodavaram for post mortem examination where Dr. N. Siva Kumar/P.W.23 conducted post mortem examination. During the inquest, P.W.1 to 5 and others were examined and during the examination the mother of deceased handed over two letters which were written by the accused and sent to them through one Sambhudu Suresh. On 14.5.2004 at 12.30 pm, the Circle Inspector/P.W.26 received the post mortem examination report of deceased No. 2 and based on the opinion of the Doctor, he has altered the section of law into Section 364, 302, 201 of IPC and issued express first information report.

4. On 15.4.2004 at about 3.00 p.m. the police arrested the accused near Cheemagandi village in presence of mediators/P.W.18 and others and the accused confessed that he committed the murder of his brother-in-law/Vallala Prakashrao on 30.4.2004 near Sufani Hills with beating with stone and that on 1.5.2004 afternoon killed his wife by stabbing with knife and later concealed his blood stained shirt in a secret place. Basing on the confessional statement of the accused, the blood stained shirt of the accused was recovered in presence of mediators. Thereafter the accused was sent to Community Health Centre, Rampachodavaram for medical examination, wherein the Medical Officer examined the accused and found teeth bite marks on left index finger, cut injury on right thumb and issued wound certificate/Ex.P-18.

5. On 16.4.2004 the concerned Magistrate on requisition from the police, obtained sample hand writing and sample signature of the accused. The said sample hand writing and sample signatures and the letters addressed by the accused which were recovered from the mother of deceased were sent to Hand Writing expert, Hyderabad, who on comparison opined that the seized letters and the admitted writing of the accused is one and the same.

6. Dr. B Bala Subramanyam/P.W.22 issued the post mortem examination report of deceased No. 1 and opined that the cause of death is "shock due to hemorrhage from the large blood vessels of the neck caused by sharp object". Dr. N Siva Kumar/PW23 issued post mortem examination of deceased No. 2 and opined that the cause of death is "shock due to intracranial hemorrhage due to injury to the left side of the occipitomastoid region".

7. The Investigating Officer, clubbed the investigation in both the crimes and filed a common charge sheet in the Court against the accused.

8. Upon hearing the learned Counsel appearing for the accused and the learned Additional Public Prosecutor, the Court below framed the charges against the accused under Sections 300, 302, 364 and 201 of IPC. The plea of the accused is denial.

9. The prosecution in support of its case, examined P.W.1 to P.W.26 and marked documents in Ex.P1 to Ex.P29 and also marked material objects in M.O.I to M.O.26.

10. Admittedly there was no direct witness to the incident, as such the prosecution solely relied on the circumstantial evidence and the confession made by the Petitioner before P.W.6 to 8 and the letters addressed by him as regards commission of offence.

10. The Court below considering the evidence available on record and particularly the evidence of P.W.1 to 3, P.W. 9 to 12 and the letters written by the accused in Ex.P3 and Ex.P4 observed that the intention of the accused to kill the deceased 1 and 2 is established and held that prosecution clearly established its case beyond reasonable doubt for both the offences u/s 302 and 364 of IPC and convicted and sentenced the accused as stated supra. Questioning the said conviction and sentence, the present appeal is filed.

11. Learned counsel for accused/Appellant submitted that letters in Ex.P3 and P.4 were introduced subsequently and Mr. Suresh who stated to have handed over the said letters was not examined by the prosecution. That no complaint was lodged immediately after missing of Prakash Rao/deceased No. 2 and that accused had no prior intimacy with PW 6 to 8 to confess about the commission of offence. It is further submitted that no test identification parade was conducted by the prosecution to identify the accused by P.W 10 and 11 who stated to have seen the accused taking the deceased No. 2/Prakash Rao, from the school, as they are strangers to accused. In support of her contention, has placed reliance on judgment of supreme Court in M. Nageshwar Rao v. State of Andhra Pradesh 2011 (2) SCC (Cri) 646 wherein while dealing with Sections 24 and; 27 of the Evidence Act, 1872 the Apex Court held that "confessional statement disowned by accused and unsupported by any witness cannot be used for judging Appellants guilt must be left out of consideration. She further submitted that deceased Nos. 1 and 2 were not seen in the company of the accused immediately prior to the incident and there was long gap between the alleged last seen in the company of accused and death of the deceased, therefore, such a theory cannot be applied to the present case and relied on a judgment of this Court in State of Andhra Pradesh v. Kotiyada Nagaraju and Anr. 2010 (1) ALD (CrI) 381 (AP) wherein this Court held that "circumstantial evidence of last seen theory cannot be relied upon to convict accused, unless it is established that there is no possibility for intervention of any other person in commission of said offence". She further relied on decision of the Supreme Court in Keshav Vs. State of Maharashtra, wherein it was held that "the circumstance of last seen together becomes relevant only when death is proved to have taken place within a short time of the accused and the deceased being last seen. Matter might have been different if a murder of wife is alleged to have been committed by a husband within the four walls of a room which was occupied by them". She further relief on judgment of Supreme Court in Jaswant Gir Vs. State of Punjab, while dealing with the circumstantial evidence of last seen held that "the version of PW about deceased having taken a lift in the vehicle of Appellant doubtful as Appellant was going in a direction different from the destination of deceased and prima facie there was no apparent reason why deceased should have chosen to go in the

vehicle which was proceeding in some other direction, held that the circumstance by itself does not lead to irresistible conclusion that Appellant and his companion had killed the deceased and thrown the dead body in a culvert, wherefrom the body was recovered, there being a considerable time gap between the deceased boarding the Appellants vehicle and time the dead body was found. In the absence of any other links in the chain of circumstantial evidence/help Appellant cannot be convicted solely on the basis of last seen together evidence".

12. On the other hand, the learned Public Prosecutor while supporting the conviction and sentence imposed by the Court below, submitted that accused suspect the character of his wife and also formed an opinion that she neglects him with the support of her "parents and bore grudge against her and decided to teach a lesson by causing harm to her family members particularly Prakash Rao who is brother of his wife whom she cares more and in furtherance of the same has taken away Prakash Rao from his school and sent letters to his wife and mother-in-law to bring his clothes and demanded money and since there was no response for the same, has killed Prakash Rao/deceased No. 2 and after four days took his wife to his fields and killed her by indiscriminately stabbing her. He further submitted that deceased No. 1/wife resisted him and in the course accused received teeth bite injury on his left finger and thumb. He further submitted that the letters written by the accused after commission of offence, admitting the same is crucial evidence and on comparison it was established that the same were written by him, as such it was proved beyond doubt that the accused has killed his wife and brother in law and submitted that the Court below has rightly convicted and sentenced the accused and the same needs no interference.

13. Heard the learned Counsel for Appellant and learned Public Prosecutor at length and perused the material available on record.

14. Admittedly there was no direct witness to the incident. To prove the fact that the accused has taken away Prakash Rao/deceased No. 2 from the school, the prosecution adduced the evidence of P.Ws. 9 to 11 i.e. Pallala Sireesha, classmate of deceased No. 2, a teacher and Academic Incharge of Deepti School respectively.

15. Since Pallala Sireesha/P.W.9 was a child witness aged about 10 years, the learned Judge posed certain general questions to test her capability of understanding and having satisfied about the same, recorded her statement. In her statement, she stated that she knows the accused, who is brother-in-law of deceased No. 2 and has identified the accused who was present in the Court. She stated that on one day at 4 P.M. accused came to their school and taken away Prakasam from the school and when she asked the accused replied that after purchasing some eatables for Prakasam he will send back Prakasam, that deceased No. 2 was last seen on that day with the accused. She also stated that she can identify the clothes of the deceased No. 2.

16. Mr. Bathureddy Balu Reddy/P.W.10 was the teacher at Deepthi School during the relevant time. In his Evidence he stated that on 26.4.2004 at about 4 p.m., Jaggareddy/accused herein who was identified by him has come to the school and met Mr. Abbareddy/P.W.11 who is Motivator of Deepthi School and asked permission to take away Prakasarao outside and that Abbareddy informed about the same and they refused permission to take away the child and on request of the accused permitted him to talk with Prakash Rao within the school premises and later learnt through Sireesha/P.W.9 that accused took the boy outside on the pretext that he will provide sweet, immediately the Motivator went outside and on enquiries with the shop keeper came to know the accused has taken away prakash Rao by boarding a bus. Since accused is brother-in-law of Prakash rao they thought that the child is in safe custody. That on 27.4.2004, Pentamma/deceased No. 1 came to school and enquired about Prakash Rao and they informed her that accused has taken away Prakashrao.

17. Mr. Kathula Abbareddy/P.W.11 who was Motivator of Deepthi School during relevant period, in his evidence stated that on 26.4.2004, at about 4.00 p.m. the accused came to their school and met him and requested to take Prakasam of Anampalli to his village on the ground that his mother is sick, that he refused for the same and then they met Mr. Bal Reddy/P.W.10 who is Academic Incharge and they permitted him to talk with the boy within the premises of the school and later Sirisha (P.W.9) informed them that accused took away Prakasam and immediately they searched for Prakasam and on enquiries with the shop keeper, came to know that accused took away Prakasam in a bus. That Pentamma/deceased No. 2 came to the school and enquired about Prakasam and they informed that accused has taken away Prakasam.

18. Thus, by the above evidence it is quite clear that accused went to the school of Prakasarao/deceased No. 1 and took him away and there after the deceased No. 2/Prakashrao was not seen alive.

19. The accused has written two letters which were marked as Ex.P3 and P4 and sent them to P.W.5 Valala Yesamma and his wife/Pentamma.

20. Smt Valala Yesamma/P.W.5 in her evidence stated that she knows accused who is husband of deceased-Pentamma and their marriage took place about 6 years back and later on the information furnished by the mother of accused about his ill treatment towards Pentamma, P.W.2/mother of Pentamma brought her to Anampalli and after lapse of about one year, accused came back to Anampalli and promised that he will look after Pentamma well and took her back. That she rented her house to them and that after living happily for some time again the accused started beating her suspecting her character. That one day prior to the offence, accused and deceased were going outside and on her questioning they replied that they were going to Gaddada and that the she has seen them lastly on that day. On the next day, they came to know that Pentamma died. That accused addressed letter to her which is marked at Ex.P.4 That Pentamma read over the contents of Ex.P.4 wherein accused asked

Pentamma to bring his clothes and cash of Rs. 500/- to Gokavaram; village bus stand to see her brother.

21. Ex.P3 and Ex.P4 are tetterers addressed by accused, whereunder the accused threatened to kill the deceased No. 1 and her brother. In Ex.P-3 he stated that "he know how to take revenge and that Pentamma got much affection towards her younger brother and that he does not know where to take him and that for searching him you/pentamma would die. That Pentamma teased him so many times that she has chosen her own way and he has to see his own way. For going to Hyderabad he has less money so he has to sell her brother, he has no other go. So, if she can arrange Rs. 500/- and come to Gokavaram then he will hand over her younger brother to her safely. If it is not done the dead body of Prakasam will be coming to you. This would certainly take place. While coming for me, you and Sailaja should only come and then only I will handover, if anybody else accompanies I will not be available to you. If you bring money your brother would be handed over to you. If you do any foolish acts he would not be delivered to you. If you come to Gokavaram on Friday by 12 "O" clock, I will be available, otherwise your brother"s dead body comes to you".

22. Ex.P4 is another letter addressed by accused to P.W.5 Valala Esamma, wherein he stated that "you teased me assuming that I am a fool. I will show my cleaverness. You and your family members have to send to Rs. 500/-. If you send your daughter along with money and Sailaja your daughter and her younger brother will return safely, otherwise, if anybody accompanies then I do not know what would happen. All of you became hand in glove and took revenge on my life. Till now I could not know about you. From now onwards you would know about me. Nothing danger will happen to anybody. If you send your daughter along with money and Sailu your son and daughter will be delivered to you, otherwise dead body will come. What I want to write to you is on Friday at 12 "O" clock if you send your daughter they will be available to you, otherwise if you do any foolish thing you would know what would happen. Again it would be written, if you send your daughter along with Sailu, her younger brother would be available to you. I will wait at Gokavaram on Friday at 12 O'clock.

23. Ex.P.23 is postal Inland letter addressed by accused to Inspector of Police, wherein he admitted about commission of offence and has given reasons for the same. In the said letter he states that "what I want to writ to you is : I am offender. I myself killed my wife. I am admitted that I am accused daringly. You assume that why I absconded after committing the offence. Sir, for this there are some reasons....For committing this offence there is reason sir. Myself and my wife used to reside in the house of our parents-in-law in Anampalli village. Like wise when we were residing at P. Gaddada her mother and father asked her not to live with me, concealed her at different places and used to search as if she was not available. Even then I did not feel. Later they took away their daughter stating that I would not have any connection with her and beating me and harassing me in several ways. Later after two years, I decided to marry another

woman by convincing her. Knowing these facts my wife wrote letters to me. As is my beloved wife again I took her. They all became one within at least four months. Afterwards they subjected me to several harassment which will not be done even by God. I bore all this with great patience...Again on Friday, I witnesses her with another person in Asoka Talkies. Later they were found attending movies and Shikars in auto. As my wife is having illicit intimacy with another person, I do not know if your wife does so what would do, I did so as my wife did such things. There is nothing concern either to our family members of our village elders in the aspect of this murder. If you want you could send them out. If you can do please send my mother-in-law, father-in-law and my wife's sister I cannot wait. Since, my wife's sister V. Rajeswari moved with rifle for some days with C.P.M.L. she is of very proud in talking. Due to these talks this murder-was committed."

24. Ex.P.25 is the report of the Scientific Assistant, A.P. Forensic Science laboratories, who examined the signatures and writing of the accused and opined that the same are written by one person/accused. The opinion reads as under;

Opinion : Basing on the above writing characteristics, I am of the opinion that : "The person who wrote the red enclosed signatures and writings marked S1 to S10 also wrote the red enclosed signatures and writings marked Q1 to Q8.

25. In view of the above, it is clear that Ex.P.3, Ex.P.4 and Ex.P.23 are written by accused himself. In Ex.P.3 and Ex.P.4 the accused demanded to bring his clothes and Rs. 500/- and threatened his wife and in-laws with dire consequences and in Ex.P.23 he in clear terms has admitted that he has committed the offence and has also given reasons for doing so. There is no reason to doubt the said letters inasmuch it was proved that the same were written by the accused.

26. The prosecution further examined P.W.1 to 3 who are maternal uncle mother and sister of deceased Nos. 1 and 2 to prove that accused used to harass the deceased No. 1. P.W.5 who-has last seen the deceased No. 1 in company of accused also stated about the harassment made by the accused.

27. The prosecution has examined P.W.7/Gantala Balreddy and P.W.8/Chedala Buchireddy to prove the extra judicial confessional statement made by the accused admitting the commission of offence.

28. P.W.7 in his evidence he stated that he knows Jaggareddy/accused and that on 1.5.04 at about 7.00 p.m. accused came his house and by the time he reached his house along with P.W.8, accused was talking to his wife and they all consumed toddy and that accused was without shift and he noticed two injuries, one on the right thumb and another on the left thumb of the accused and that he found cloth bandage to his right thumb by tearing his shift. When questioned about the injuries he replied that he killed his wife and in the process he sustained injuries and also informed that there are disputes between them. That he advised him to surrender before the police.

29. P.W.8 in his evidence he stated that he knows accused and on 1.5.2004 he went to the house of P.W.7 and after attending to their toddy tapping work they reached their house at 6.00 p.m. and found accused talking with wife of P.W.7 and they consumed toddy. He further stated that he noticed injuries on left and right hand thumb of accused. On left hand thumb there were bite marks. That the accused turned his shirt and with that piece of cloth bandaged his right hand thumb and on their questioning as to how he sustained the said injuries, he replied that himself and his wife altercated and thereafter he killed his wife. That he killed his wife suspecting her character as she used to move with others. The witness further states that himself and P.W.7 informed him to surrender before the police.

30. There is no reason to disbelieve the evidence of P.W.7 and 8 before whom the accused has confessed and made a confessional statement inasmuch as the said witnesses have no enmity with the accused and there is no reason for them to depose against the accused.

31. The evidence of P.W.5 clearly establishes that deceased No. 1 was last seen with the accused. The evidence of P.W.9 to 11 clearly establishes that accused has taken away Prakashrao/deceased No. 2 from the school and P.W.9 has last seen the deceased No. 2 in the company of accused and thereafter deceased No. 2 was not seen alive. Thus, the evidence of P.W.5 and the evidence of P.W.9 clearly establish that deceased Nos. 1 and 2 were last seen in the company of accused. The accused has admitted commission of offence before P.W.7 and 8 and in their presence the confessional statement of accused was recorded wherein accused admitted the commission of offence. The letters addressed by accused in Ex.P.3, Ex.P.4 and Ex.P.23 connect the accused with the crime and the writing in the said letters were sent to comparison and the expert has opined that the said letters were written by the accused vide his opinion in Ex.P.25. There is evidence on record to show that there are certain disputes between the accused and his wife/deceased No. 1, he suspects her character and he bore grudge towards her and her parents on the ground that she is neglecting him under the influence of her parents and he himself in letters in Ex.P.3 and P.4 admitted about the same and threatened his wife.

32. Thus, the circumstantial evidence produced by the prosecution connects the chain of events beyond doubt and establishes that the accused has killed the deceased Nos. 1 and 2. The Court below basing on the circumstantial evidence led by the prosecution has rightly found the accused guilty of the offence of killing deceased No. 1 and 2 and convicted and sentenced him as stated above. There are no grounds made out warranting this Court to interfere with the conviction and sentence imposed by the Court below and to take a different view.

33. For the foregoing reasons, the appeal fails and is accordingly dismissed confirming the judgment dated 9.1.2007 in S.C. No. 91 of 2005 on the file of the VIII Additional Sessions Judge, East Godavari district, Rajahmundry.